

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:08CV51

**WATCHIT TECHNOLOGIES, INC.,)
and GARY MUSSELMAN,)**

Plaintiffs,)

Vs.)

ORDER

**BIG APPLE CONSULTING USA, INC.;)
MJMM INVESTMENTS, LLC;)
DONALD WOOD; DENNIS)
STEINMETZ; BRANDON WOOD;)
MARC JABLON; MARK C. KALEY,)
ESQ.; and CHILD WATCH OF NORTH)
AMERICA,)**

Defendants.)

THIS MATTER is before the Court *sua sponte*.

The remaining Defendants in this case, Big Apple Consulting USA, Inc., MJMM Investments, L.L.C.; Marc Jablon; and Mark C. Kaley, Esq., have moved to dismiss the amended complaint filed by Plaintiffs WatchIt Technologies, Inc., and Gary Musselman.

In the course of considering that motion, the Court discovered that two other lawsuits involving these parties are pending in federal district

court in Orlando, Florida. **See *Big Apple Consulting, USA, Inc., et al., v. Watchit Tech., Inc., et al.*, filed January 9, 2009 (Case No. 6:09CV73) and *Big Apple Consulting, USA, Inc., et al., v. Frank A. Moody, II, et al.*, filed January 9, 2009 (Case No. 6:09CV74) (Middle District of Florida, Orlando Division).** These lawsuits, filed by Defendants against Plaintiffs and related parties here, appear to address subject matter that is very similar to the matters at issue in this litigation. **Compare First Amended Complaint, Case No. 1:08CV51 (Western District of North Carolina), filed May 8, 2008, with Verified Complaint for Damages, Case No. 6:09CV73 (removing state court action originally filed June 11, 2008) and Complaint for Damages, Case No. 6:09CV74 (removing state court action originally filed June 5, 2008).** The two Florida lawsuits were consolidated before U.S. District Court Judge Mary S. Scriven on January 21, 2009. **Order of Transfer, Case No. 6:09CV74, filed January 21, 2009.**

An examination of the Florida court's dockets indicates that, in compliance with that court's local rules, counsel for both parties certified that the Florida lawsuits were related to each other but *not* related to any other "pending or closed civil or criminal case(s) previously filed in this

Court, or any other Federal or State court, or administrative agency.”

Notice of Pendency of Other Actions by Counsel for WatchIt Technologies, filed January 16, 2009 (Case No. 6:09CV73); Notice of Pendency of Other Actions by Big Apple’s Counsel, filed January 22, 2009 (Case No. 6:09CV73); Notice of Pendency of Other Actions by Counsel for Frank A. Moody II, filed January 16, 2009 (Case No. 6:09CV74); Notice of Pendency of Other Actions by Big Apple’s Counsel, filed January 22, 2009 (Case No. 6:09CV74). Moreover, no party has alerted this Court to the existence of the Florida lawsuits, which also suggests the cases are not related.

Nonetheless, the Court has compared the complaints in the Florida cases with the complaint pending in this Court, and the undersigned is concerned about the risk of duplicative discovery, inconsistent rulings, and waste of scarce judicial resources. Essentially, both the WatchIt parties and the Big Apple parties accuse each other of scheming to control WatchIt Technologies, with the goal of diverting the company’s assets for their own personal financial gain. Either way, both lawsuits in Florida and this one here appear to involve the same set of underlying facts, taking place around the same time period.

Accordingly, before ruling on the pending motion to dismiss herein, the Court will require Plaintiffs and Defendants to file appropriate pleadings addressing whether the instant lawsuit and the Florida lawsuits are in fact related and should be consolidated pursuant to Federal Rule of Civil Procedure 42.

IT IS, THEREFORE, ORDERED that the parties file response hereto on or before **FEBRUARY 27, 2009**, as directed above.

Signed: February 12, 2009

A handwritten signature in black ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

